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sufficient to indicate that desire (what such act shall be is often highly conventional); (3) there must be no act done by a third person which is inconsistent and intended to be inconsistent with the fulfilment of such desire.

Now, here the defendant's desire was that no one should do anything concerning a strip of land which was in any way inconsistent with his going how and when he pleased over it, and he had indicated this in the ordinary way by walking over the strip when and how he pleased.

Did the plaintiff do anything which was inconsistent with the defendant's going when and how he pleased over the strip? If he had placed a physical obstruction there, he would have done something inconsistent with the defendant's using the way as he pleased; so if he had frightened him off, for then his fears would not have allowed him to use it. But here that the threats were not inconsistent with his going how and when he pleased appears from the fact that he continued to go how and when he pleased.

I therefore think that there was no dispossession or interruption of the defendant's exercise of his easement. Another line of thought leads to the same conclusion. Nothing can be an interruption preventing the acquisition of a right of way unless it would be an actionable disturbance of a right of way already acquired. Suppose the defendant in this case had had a way by grant over the land of the plaintiff, and the plaintiff had done as he has done now, his conduct would not have amounted to a disturbance of the way for which an action would have lain.

For these reasons I am of opinion that the easement has been acquired, and that the verdict for the defendant was correct. This is in accord with *Lehigh Valley R.R. Co.* v. *McFarlan*, 43 N.J.L. 605, the case in which the matter has been most fully discussed, and which has been lately followed by *Jordan* v. *Lang*, 22 S. C. 159.

Exceptions overruled.

LECTURE NOTES.

LARCENY. — (*From Prof. Thayer's Lectures.*) — In Middleton's case[1] it was decided that one who receives money offered him by a mistake not caused by him, and knowing that the money is not his, is guilty of larceny. As to the reason for the decision, all that can be said is that, on one ground and another, the majority held this doctrine. Seven out of the fifteen judges before whom the case was argued, and of the eleven who composed the majority of the court, held that it was larceny because the title did not pass.

But this case does not support that doctrine. I have always been inclined to think the opinion of the minority the sound one, — that it was no crime.

In Ashwell's case[2] the verdict was directed by the court, that the case might be reserved, and was sustained simply because the court above were equally divided. There was no question of agency or of power to pass title. Though there was mistake, yet the owner intended to hand that coin to that particular person; and it is a reason-

[1] *Queen* v. *Middleton*, L. R. 2 C. C. R. 38.

[2] *Queen* v. *Ashwell*, 16 Q. B. D. 190.

able view which Mr. Holmes supports,[1] that the line should be drawn just here. The defendant was not, therefore, guilty of larceny. In Flowers' case[2] the question, as it was presented, was simply whether one is guilty of larceny who receives money without a felonious intention, and afterwards (no matter how soon) appropriates it; and the court say that, without question, he would not be.

BILLS AND NOTES ON WHICH ARE FICTITIOUS NAMES. RIGHTS OF INNOCENT HOLDERS FOR VALUE. — (*From Prof. Ames' Lectures.*)

1. If one draws a bill or makes a note in the belief that it is payable to a particular person, his intent is to pay to the order of that person. Hence if any one else indorses the instrument, the drawer or maker cannot be held, such indorsement not being within the contract.[3] But if one accept a bill payable to A, under the impression that A_1 is meant, while the drawer really means A_2, the court would probably hold the acceptor on the indorsement of A_2, on the ground that the identity of the payee is a matter of indifference to the acceptor, who relies on only the drawer in accepting. On principle the acceptor of a bill payable to a fictitious name, which he believed to be the name of a real person, should be held under an indorsement by the drawer in that name. On the same reasoning one who draws a bill or makes a note for accommodation should be held, even if the payee is other than he supposed. He relies on the credit of the friend he is accommodating, and the identity of the payee is a matter of indifference to him.

2. If one draws or accepts a bill, or makes a note which he knows to be payable to a fictitious payee, he is bound by an indorsement which in form is the same as the name of the payee. But to hold the acceptor of a bill drawn in a fictitious name and payable to the drawer's order, it must be shown that the indorsement in the name of the payee was made by the drawer, or by his authority, for the acceptor's contract is to pay to the order of the drawer under this fictitious name.[4]

3. If one draws or accepts a bill or makes a note payable to some name of which he knows nothing, he is bound if the indorsement is by one having a right to use that name. If the name of the payee is fictitious, and is known to be such at the time of signing, the case comes under (*2*) above; if it is not known to be fictitious, or if no inquiry is made, or a blank form is signed, an acceptor is bound.[5] This is on the theory that if the acceptance is given after the bill is drawn the acceptor contracts either (*a*) to pay to the order of any person, firm, etc., properly using that name, or (*b*) to pay to any one who holds the note as indorsee under an indorsement corresponding in form to the payee's name and made by the drawer; for the bill is really in the interest of the drawer, and not, as where there is a real payee, in the interest of the payee. Hence only the drawer properly has the right to indorse it. Thus the acceptor is liable whether the facts are as indicated in (*a*) or as in (*b*). If the acceptance is on a blank form the above reasoning applies, on the principle that an acceptance in blank binds the acceptor in the same way that he would be

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[1] Holmes' Com. Law, 312, 313; cf. 135 Mass. 283.
[2] *Queen* v. *Flowers*, Q. B. D. 643.
[3] *Bennett* v. *Farnell*, 1 Campb. 130; Ames' Cases on Bills and Notes, vol. 1, 461.
[4] *Cooper* v. *Meyer*, 10 B. & C. 468; Ames' Cases on Bills and Notes, vol. 1, 493.
[5] *Cooper* v *Meyer*, *supra*.